

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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AMERICA ONLINE LATINO, et ano.,

Plaintiffs,

-against-

02 Civ. 4796 (LAK)

AMERICA ONLINE, INC., et al.,

Defendants.
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ORDER

LEWIS A. KAPLAN, *District Judge*.

Plaintiff in the above-captioned matter has requested clarification of the Court's memorandum opinion dated March 13, 2003. That opinion ordered, *inter alia*, the severance and transfer to the United States District Court for the Eastern District of Virginia of plaintiff's third and sixth claims for relief, while retaining in this district the second claim for relief against VeriSign. In consideration of the fact that the only part of this action that now remains in this district is the second claim for relief against VeriSign, and that plaintiff consented to personal jurisdiction in the Eastern District of Virginia under the terms of his agreement with VeriSign's Image Café,¹ the subject of the second claim for relief, the Court hereby orders, pursuant to 28 U.S.C. § 1404(a), the transfer of the second claim for relief to the Eastern District of Virginia.²

¹

Hornak Decl. Ex. D, ¶ 14 ("You hereby consent to personal jurisdiction in the federal courts in the eastern district of the Commonwealth of Virginia and the state courts of Fairfax County, Virginia for any action arising out of or related in any way to this Agreement or relating to your use of the SUBSCRIPTION SERVICE (or any component thereof).") Moreover, the terms of the contract must be interpreted in accordance with Virginia law. *Id.*

²

Section 1404(a) of the Judicial Code permits transfer of an action for the convenience of parties and witnesses and in the interest of justice to any district in which it might have been brought. 28 U.S.C. § 1404(a). The Court finds that the convenience of the parties and the interest of justice will be served by transfer of the remaining claim to the Eastern District

The Clerk shall transfer the original record to the Eastern District of Virginia and close the case.

SO ORDERED.

Dated: April 2, 2003

Lewis A. Kaplan
United States District Judge

of Virginia. *See Nat'l Union Fire Ins. Co. v. Turtur*, 743 F. Supp. 260, 263 (S.D.N.Y. 1990) (interest in preventing duplicative litigation supported transfer). Furthermore, this claim could have been brought in the transferee district in the first place because both plaintiff and defendant VeriSign consented to jurisdiction in the state and federal courts of Virginia. *See John's Insulation, Inc. v. Siska Constr. Co., Inc.*, 671 F. Supp. 289, 295 (S.D.N.Y. 1987) ("A permissive forum selection clause . . . empowers a court to hear a particular case."). Finally, it bears noting that a district court may transfer an action pursuant to § 1404(a) on its own motion. *Banco de Seguros del Estado v. Employers Ins. of Wausau*, 171 F. Supp.2d 330, 332 n.5 (S.D.N.Y. 2001).